

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1253**

Noo Vang,
Relator,

vs.

Mo's Tropical Market,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed September 5, 2023
Affirmed
Wheelock, Judge**

Department of Employment and Economic Development
File No. 48617698-3

Noo Vang, St. Paul, Minnesota (pro se relator)

Mo's Tropical Market, North St. Paul, Minnesota (respondent employer)

Keri Phillips, Department of Employment and Economic Development, St. Paul,
Minnesota (for respondent department)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Relator appeals from the determination of an unemployment-law judge that he was
ineligible for unemployment benefits because he was discharged for employment

misconduct. We affirm the determination of ineligibility because substantial evidence supports the unemployment-law judge's factual findings and the relator's conduct constituted employment misconduct under the law.

FACTS

Relator Noo Vang worked as a warehouse manager for respondent Mo's Tropical Market. Mo Chang, the owner of Mo's Tropical, discharged Vang on February 20, 2022. Vang applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED). In March 2022, DEED issued an initial determination that Vang was eligible for unemployment benefits because the conduct for which he was discharged was not employment misconduct. Mo's Tropical appealed the determination.

In May 2022, an unemployment-law judge (ULJ) held an evidentiary hearing on the matter. Vang and Chang both participated in the hearing. X.H., a Mo's Tropical employee, participated as a witness on behalf of Vang.

Chang testified that she discharged Vang for a series of behavioral incidents that occurred between August 2021 and February 2022. Vang's conduct included making inappropriate comments to female customers, engaging in a verbal altercation with a warehouse employee, bringing a female customer into an employees-only produce cooler, confronting and threatening another employee for speaking to Chang about Vang's behavior, and leaving work early on a busy holiday when he was scheduled to work until close. Chang spoke to Vang about his behavior several times.

Chang also described the final behavioral incident immediately preceding Vang's discharge. Chang testified that while she was assisting customers and other employees were closing and cleaning the store on February 19, 2022, Vang turned the lights off in the store. Chang turned the lights back on and asked Vang not to turn the lights off while she was still assisting customers. Instead, Vang turned the lights off again and left the store, refusing to turn them back on when Chang asked him to do so. The following day, Chang notified Vang that he was discharged.

Vang admitted to several of the incidents that Chang described in her testimony and denied others. He conceded that he turned the lights off in the store while Chang was helping customers on February 19, 2022. He testified that he did this to "protest" what he believed to be unfair working conditions. He testified that the store was supposed to close at 6:00 p.m., but Chang continued to allow customers into the store and helped them until 7:15 p.m. He testified that Chang allowed the teenaged employees to go home at 7:00 p.m. that night, but she required the older employees to stay late and continue to clean without prior notice that they would be working late.

X.H. testified that he was present in the store on February 19 and witnessed Vang turn the lights off in the store. He testified that Vang turned the lights off again after Chang asked Vang to keep the lights on.

The ULJ determined that Vang was discharged due to employment misconduct and was not eligible to receive unemployment benefits, resulting in an overpayment of unemployment benefits in the amount of \$4,232.

Vang requested reconsideration of the ULJ's decision, and the ULJ affirmed the decision. Vang filed a petition for a writ of certiorari.

DECISION

On appeal, Vang argues that Chang's testimony "went beyond what really happened" during the February 19 incident that preceded his termination. He requests that this court "disregard all personal attacks outside of this specific incident" because Chang lacked evidentiary support for the assertions she made at the hearing. However, we are not persuaded that the ULJ erred in crediting Chang's testimony, finding facts, or determining that Vang was discharged for employment misconduct.

An applicant is ineligible to receive unemployment benefits if the applicant was discharged for employment misconduct. Minn. Stat. § 268.095, subd. 4(1) (2022). Employment misconduct is defined as "any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." *Id.*, subd. 6(a) (2022).

"Whether an employee committed employment misconduct is a mixed question of fact and law. Whether the employee committed a particular act is a question of fact." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006) (citation omitted). This court reviews a ULJ's findings of fact "in the light most favorable to the decision . . . giving deference to the credibility determinations made by the ULJ." *Id.* (citation omitted). This court will not disturb the findings of fact "when the evidence substantially sustains them." *Id.*; see Minn. Stat. § 268.105, subd. 7(d)(5) (2022) (stating that this court "may reverse or modify the [ULJ's] decision if the substantial rights of the

petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are . . . unsupported by substantial evidence in view of the hearing record as submitted”). We review de novo “whether the act committed by the employee constitutes employment misconduct.” *Skarhus*, 721 N.W.2d at 344.

I. The evidence substantially supports the ULJ’s findings of fact.

Vang appears to challenge the evidence supporting the ULJ’s factual findings. He argues that Chang’s claims lacked support, and he states that he supplied a witness to support his claims, whereas Chang did not.

The ULJ’s decision included the following findings of fact that describe the acts Vang committed that led to his discharge:

- In August 2021, “Chang spoke to Vang about some performance concerns and his inappropriate comments towards female customers.” Also in August, “Vang confronted a warehouse worker in front of other employees and both Vang and the warehouse worker were swearing at each other.”
- “In September 2021, Vang brought a customer to the reefer, which is a large cooler and for employees only. Vang knew the reefer was intended for only employees of Mo’s Tropical Market. Vang also confronted . . . the facility manager about his reason for submitting a resignation notice. Vang was upset with [the facility manager] because [he] told Chang that part of the reason he was quitting was due to Vang’s management style.”
- “Vang received a verbal warning from Chang about his behavior towards [the facility manager].”
- “On January 1, 2022, Vang left work early without permission. Chang told Vang that she wanted him to work until the store closed, but Vang left work several hours before closing.”

- “On February 19, 2022, Chang asked Vang to stay and help staff clean up the store. Vang refused to stay and help. Vang turned off the lights in the store while staff were cleaning, and Chang was assisting customers. Chang told Vang to turn the lights back on, but he refused and walked out.”
- “On February 20, 2022, Vang was discharged due to insubordination.”

The decision stated that these findings of fact were based on the documents and testimony in the record, and “[t]o the extent the parties did not agree” in their testimony, the ULJ “relied on Chang’s testimony because it was detailed, consistent, and provided a more likely sequence of events.”

When viewing the evidence in the light most favorable to the decision and giving deference to the ULJ’s credibility determination regarding Chang’s testimony, *see Skarhus*, 721 N.W.2d at 344, it is clear that substantial evidence supports the ULJ’s factual findings that Vang committed each of the acts that led to his discharge.

Throughout her testimony, Chang described Vang’s conduct as “unacceptable,” “hostile,” “inappropriate,” “unprofessional,” “embarrassing,” and “disrespectful.” She testified in detail about each of the incidents leading to Vang’s discharge and submitted written documentation describing the incidents as well. Chang and Vang both testified that Chang talked to Vang about his conduct at least twice before he was discharged; thus, Vang was aware that his conduct was inappropriate and could lead to his discharge.

Furthermore, Vang admitted to several of the incidents in his testimony, including the two August incidents in which he made inappropriate comments to female customers as well as fought with and swore at a warehouse employee, the September incident in which

he brought a customer into the reefer, the January incident in which he left before closing, and the February incident in which he turned the lights off and walked out. Vang's witness, X.H., confirmed that Vang turned the store lights off after being asked to leave them on during the February incident.

Therefore, we conclude that the record substantially supports the ULJ's findings of fact regarding the acts that led to Vang's discharge.

II. The ULJ did not err by determining that Vang's conduct constituted employment misconduct.

Our de novo review confirms that the district court did not err in concluding that Vang committed employment misconduct. *See Skarhus*, 721 N.W.2d at 344. The ULJ found that "Vang's conduct was a serious violation of the standards of behavior that Mo's Tropical Market had a right to reasonably expect from its employees," and therefore, Vang's conduct constituted employment misconduct.

The supreme court has held that "refusing to abide by an employer's reasonable policies and requests amounts to disqualifying [employment] misconduct." *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). We have similarly concluded that a "pattern of failing to follow policies and procedures and ignoring [an employer's] directions and requests" constitutes employment misconduct. *Gilkeson v. Indus. Parts & Serv., Inc.*, 383 N.W.2d 448, 452 (Minn. App. 1986).

We have also concluded that an employee's rude behavior toward customers, fellow employees, and supervisors constitutes employment misconduct. *Montgomery v. F & M Marquette Nat'l Bank*, 384 N.W.2d 602, 605 (Minn. App. 1986), *rev. denied* (Minn.

June 13, 1986); *see also Pitzel v. Packaged Furniture & Carpet*, 362 N.W.2d 357, 357-58 (Minn. App. 1985) (concluding that “aggressive and offensive” behavior with customers is employment misconduct).

Here, the law supports the ULJ’s determination that Vang’s conduct constituted employment misconduct. The incidents, spanning August 2021 to February 2022, demonstrate that Vang refused “to abide by [his] employer’s reasonable policies and requests.” *Schmidgall*, 644 N.W.2d at 804. Vang’s inappropriate comments to female customers and his hostility toward fellow employees is further evidence of employment misconduct. *See Montgomery*, 384 N.W.2d at 605. The repetition of his conduct over several months of his employment shows a “pattern of failing to follow policies and procedures and ignoring [his employer’s] directions and requests.” *Gilkeson*, 383 N.W.2d at 452.

Even if we were to disregard the earlier incidents and assume that Vang was discharged solely for the February 19 incident, our conclusion would remain the same. The supreme court has held that “[a] single incident can constitute misconduct when an employee deliberately chooses a course of conduct that is adverse to the employer.” *Schmidgall*, 644 N.W.2d at 806.

The February 19 incident involved Vang’s deliberate choice to turn the lights off in the store—while several customers and employees were still inside—and walk out on his shift. This conduct was adverse to Vang’s employer because it showed disrespect to the customers and employees and disrupted the customer-service, cleaning, and closing tasks

that the employees were performing. Mo's Tropical Market had a right to reasonably expect that Vang would not engage in this type of behavior.

In sum, we conclude that the ULJ did not err as a matter of law in its determination that Vang was discharged for employment misconduct.

Affirmed.